



# PAT STRACHOTA

STATE REPRESENTATIVE

Ways and Means Committee

SS AB 23

October 25, 2011

Testimony

Good morning. I would like to thank the chair person and committee members for holding this public hearing on SS AB 23.

SS AB 23 makes a variety of changes to the procedural statutes governing the actions of the Department of Revenue (DOR) in providing advice, conducting audits, imposing penalties, issuing refunds, promulgating administrative rules and litigating disputes. These necessary changes have been brought to light over the course of many years and I am grateful that the DOR, Senator Zipperer, and I have collaboratively worked hard to create a fair bill that helps to minimize regulatory red tape for Wisconsin taxpayers.

SS AB 23 is meant to address three main areas that are employed by Wisconsin Department of Revenue. Specifically, this bill looks at the following:

1. Guidance that is granted by the Wisconsin Department of Revenue;
2. The audit procedures that are used by the DOR; and
3. The appeals and forfeiture provisions within current law.

This bill will prevent DOR from taking a position in an audit, assessment, or refund claim that is contrary to published guidance issued by the department. The goal of this bill is to ensure that if DOR provides guidance or advice to a taxpayer, then the department must stick to that advice and not change its mind later down the road.

Further, SS AB 23 specifies that if the department conducts an audit of an individual taxpayer or business, the information that was audited should be exempt from future audits. This change is intended to protect taxpayers that conform their business/reporting standards to prior audit procedures after DOR has changed its position without giving prior notice.

SS AB 23 also pushes the burden of proof of negligence onto the department rather than the taxpayer's failure to pay a tax, failure to file a return, or improper filing of a tax return were the result of reasonable cause and willful neglect.

The bill also affords retailers some protections, by preventing taxpayers from filing class action lawsuits in an effort to secure a refund on sales and use taxes.

An additional of the change clarifies that DOR will no longer be able to avoid the implications of a Tax Appeals Commission decision by issuing a notice of non-acquiescence. This will also require DOR to respond, within a specified time frame, to petitions for administrative declaratory judgment. To my knowledge, there is currently no timeline required. The bill also provides that if DOR has established a standard by which it is construing a statute but has not promulgated a rule containing this standard, then, upon the filing of a petition, the department must initiate the rule making process to address the circumstances implicated by the standard employed by DOR. Lastly, it extends the anti-browsing law to protect taxpayers filing returns and claims with respect to all of the taxes administered by DOR's income sales and use tax division.

I believe that SS AB 23 will be a welcome relief for businesses and taxpayers alike. It will simplify and clarify the state's tax collection system, which will lead to reduced costs for businesses and taxpayers and a better environment in which to do business in Wisconsin. Businesses lack confidence in how the system interprets tax laws. Clearer direction for them to follow is necessary to allow them to regain confidence in the system. This is what SS AB 23 tries to accomplish.

Looking forward I feel this will go a long way in retaining and enhancing the business opportunities in this state. The vast majority of businesses and taxpayers know and are willing to pay taxes owed. What they need is clarity in how the taxes are collected. SS AB 23 provides fairness and consistency to the tax code.



# State of Wisconsin • DEPARTMENT OF REVENUE

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## **DOR Procedures Reform Bill – Special Session Assembly Bill 23**

*Assembly Committee on Ways and Means*

October 25, 2011

Special Session Assembly Bill 23 is consistent with DOR's goal to provide excellent customer service by codifying existing practices and establishing new pro-taxpayer reforms, including:

- Improving communication between DOR and taxpayers.
- Promoting consistent tax policy and treatment for taxpayers.
- Assuring that penalties for noncompliance are fair.
- Strengthening taxpayer confidentiality by updating language to match updated technology.

DOR has developed Publication 114 that reflects how DOR employees are expected to treat taxpayers whether under audit or otherwise. DOR provides extensive training to our employees to ensure accurate and consistent taxpayer guidance and audits. Many of the procedure reforms included in Special Session Assembly Bill 23 are already DOR practice. This legislation will further establish these practices. Other changes are consistent with DOR's customer service and policy goals and will ultimately result in better tax administration for both the individual taxpayer and DOR.

### **Key Highlights of SS AB 23**

- ❖ *Negligence Penalties*  
The bill moves the burden of proof for negligence penalties assessed by DOR from the taxpayer to DOR. The standard to assess a penalty remains willful neglect by the taxpayer and not errors that resulted from reasonable cause. DOR already assesses taxpayers and defends cases before the Tax Appeals Commission (TAC) as if the burden were on DOR to prove taxpayer negligence.
- ❖ *Written Guidance*  
DOR desires its guidance on tax issues to be accountable and consistent. This provision provides clarity that published guidance is authoritative for taxpayer use
- ❖ *Reliance on Past Audits*  
This bill provides that DOR cannot hold taxpayers liable for taxes due that are inconsistent with a past audit of that same tax issue, unless DOR has disseminated revised published guidance on the same issue, or unless there has been a law or rule change or final decision of the TAC or courts on the same tax issue.
- ❖ *Browsing*  
Special Session Assembly Bill 23 strengthens statutory language that specifies DOR employees may not browse through taxpayer information. Current statutes limit browsing prohibitions to only the tax returns and only individual income taxes. However, with electronic record storage, "information" is a more descriptive term that will protect taxpayers from unnecessary viewing of their confidential tax records by DOR employees.

